IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

# MFA.No. 1039 of 2000(A)

OPMV.1390/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA

APPELLANT: PETITIONER:
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BALAN, S/O.CHATHU, AGED 50 YEARS,
RESIDING AT KARAMMAL HOUSE,
KINALOOR AMSOM DESOM, THALAYAD P.O.,
UNNIKULAM (VIA), KOZHIKODE.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.M.R.SREELATHA

RESPONDENTS: RESPONDENTS:
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1. K.V.MOHANDAS, S/O.VENKITESWARAN,
RESIDING AT PARAYANTHAZHATH HOUSE,
EROOR, TRIPUNITHURA.

2. KORAPPAN, S/O.KORAN, AGED 42 YEARS,
RESIDING AT KOLANGARA MEETHAL HOUSE,
KIDAVOOR AMSOM DESOM, KALLULLATHODE, KOZHIKODE.

3. M/S.NATIONAL INSURANCE COMPANY LIMITED,
BRANCH OFFICE: P.B.NO.526, JAIL ROAD, KOZHIKODE.

BY ADV. SRI.G.HARIHARAN
SRI.PRAVEEN.H.
SRI.SUNNY MATHEW
SRI.M.A.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T. SANKARAN, J.**

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**M.F.A.NO. 1039 OF 2000**

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**Dated this the 20th day of December,2006**

**JUDGMENT**

Appellant was the claimant in O.P.(MV) No.1390 of 1995, on the file of the Motor Accidents Claims Tribunal, Vadakara. Though he claimed a sum of Rs.One lakh as compensation, the Tribunal awarded only a sum of Rs.19,500/- with interest at 12% from the date of petition till realisation. This appeal is filed by the claimant contending that the compensation awarded is quite inadequate.

2. The accident occurred on 17.1.1993 at about 7.P.M., while the petitioner was travelling in a bus owned by the first respondent and driven by the second respondent. The petitioner sustained injuries. He was treated at Thalayad Hospital and also at Medical College Hospital, Kozhikode. It was alleged that the accident occurred due to the

rash and negligent driving of the bus.

3. The first respondent – owner contended that there was no negligence on the part of the second respondent driver. The vehicle was insured with the third respondent insurance company. The third respondent admitted the insurance policy. The third respondent also contended that there was no negligence on the part of the second respondent.

4. The Tribunal found that the accident occurred due to the negligence of the second respondent. As a result of the accident, the appellant sustained fracture to the 7th rib on the right side, apart from other injuries. The fact that the appellant sustained injuries were proved by producing necessary documents. The Tribunal accepted those documents and held that the appellant is entitled to get compensation. The Tribunal also held that the injuries are not "that

much serious in nature" and, therefore, the amount of compensation claimed is excessive and exorbitant. As against the claim of Rs.25,000/- under the head `pain and suffering', the Tribunal awarded only a sum of Rs.12,000/-. Rs.500/- was awarded under the head `transport to hospital' as against the claim of Rs.1,000/-. Rs.1,000/- was awarded towards extra nourishment, while the claim under that head was Rs.5,000/-. Rs.500/- was awarded as compensation for damage to clothing and the claim was for Rs.1,000/- thereunder. As against the claim of Rs.43,000/- under the head `compensation for loss of earning power', the Tribunal awarded only a sum of Rs.1,000/-. A sum of Rs.1,000/- was awarded for treatment and medical expenses and Rs.3,500/- was awarded as evidenced by medical bills. After considering the evidence on record and the arguments put forward by the counsel for the appellant and the respondents, I am of the view that a sum of Rs.15,000/- can be awarded under

the head `pain and suffering', instead of Rs.12,000/- awarded by the Tribunal. So also a sum of Rs.2,000/- could be granted for extra nourishment instead of Rs.1,000/- awarded by the Tribunal. Instead of Rs.1,000/- awarded by the Tribunal under the head `loss of earning power', I am of the view that Rs.10,000/- can be awarded. Thus, a total sum of Rs.32,500/- shall be awarded to the appellant/claimant, the enhancement being Rs.13,000/-. The appellant is entitled to get interest at 7.5% on the enhanced compensation of Rs.13,000/- from the date of petition till realisation.

The M.F.A. is allowed to the extent indicated above.

**(K.T.SANKARAN)**
**Judge**

ahz/

**K.T.SANKARAN, J.**

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**CRL.M.C.NO. OF**

**O R D E R**

September, 2006

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